



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120306154-2241-02]

RIN 0648-XC382

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason quota transfer and General category retention limit adjustment.

SUMMARY: NMFS is transferring 40 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category for the remainder of the 2012 fishing year. NMFS also is adjusting the Atlantic tunas General category BFT daily retention limit to two large medium or giant BFT for the January 2013 subquota period (i.e., from January 1 through March 31, 2013, or until the available subquota for that period is reached, whichever comes first). This action is based on consideration of the regulatory determination criteria regarding inseason adjustments, and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: The quota transfer is effective December 15, 2012, through December 31, 2012. The General category retention limit adjustment is effective January 1, 2013, through March 31, 2013.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 et seq.) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 et seq.) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The 2010 ICCAT recommendation regarding western BFT management resulted in baseline U.S. quotas for 2011 and for 2012 of 923.7 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The 2011 BFT quota rule (76 FR 39019, July 5, 2011) implemented the base quota of 435.1 mt for the General category fishery (the commercial tunas fishery in which handgear is used). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. The 2012 BFT quota specifications (77 FR 44161, July 27, 2012) also put 41.8 mt into the Reserve category for inseason adjustments, and potential quota

transfers, scientific research collection, and accounting for potential overharvest in any category except the Purse Seine category.

The 2012 General category fishery is open until December 31, 2012, or until the General category quota is reached, whichever comes first. The 2013 General category fishery will open on January 1, 2013. This fishery may remain open until the “January subquota” amount is reached or March 31 (whichever comes first). The General category will then reopen for the remainder of the 2013 fishing year on June 1, 2013.

Consistent with the allocation scheme established in the Consolidated HMS FMP and implementing regulations, the baseline category subquotas were established in the 2011 BFT quota rule as follows: 23.1 mt for January; 217.6 mt for June through August; 115.3 mt for September; 56.6 mt for October through November; and 22.6 mt for December. Although NMFS published quota specifications for 2012 (77 FR 44161, July 27, 2012), the baseline General category quota and subquotas as codified have not changed from the amounts established for the 2011 fishing year. The 2012 ICCAT recommendation regarding western BFT management did not result in changes to the baseline U.S. quota for 2013.

Inseason Transfer to the General Category

Under § 635.27(a)(7), NMFS has the authority to allocate any portion of the Reserve category to any other category, other than the Angling category school BFT subquota (for which there is a separate reserve), after considering determination criteria provided under § 635.27(a)(8), which include: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular

category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

NMFS has considered the determination criteria regarding inseason adjustments and their applicability to the General category fishery for the remainder of the 2012 fishing year. These considerations include, but are not limited to, the following:

As of November 28, 2012, the General category has landed 428 mt, or 98.4 percent of its 2012 quota of 435.1 mt. Without a quota transfer at this time, most or all of the December subquota established in the 2011 final quota rule per the Consolidated HMS FMP (i.e., 5.2 percent of the General category quota, which is 22.6 mt for December 2012) effectively would not be available to fishermen who participate in the December fishery because nearly the entire General category quota has been used as of the end of November. Overall, approximately 72 percent (536 mt) of the total of the commercial BFT subquotas (747.2 mt, as published in the 2012 BFT quota specifications) has been harvested as of November 28, 2012. The Purse Seine, Harpoon, and Trap categories are not expected to use all of their available 2012 quotas (i.e., approximately 175 mt or more may remain unused). Also, as set out in the 2012 BFT quota specifications, NMFS will need to account for 2012 BFT landings and dead discards within the U.S. quota, consistent with ICCAT recommendations.

A transfer from the Reserve category decreases the amount of unused quota available, if needed, to account for all landings and dead discards within the total 2012 U.S. quota once the dead discard information is available. However, our best estimates, in part based on a review of dead discard amounts over prior years and an initial examination of preliminary recreational landings estimates, indicate that the risk of exceeding the overall quota is very small. In the process of setting the 2012 BFT specifications, NMFS has already accounted up front for half of the current best estimate of the 2012 bluefin tuna dead discards, and held a portion of the 2011 underharvest in the Reserve category rather than allocating it fully, indicating it could provide for greater management and accounting flexibility later in the fishing year. A quota transfer at this time would provide additional opportunities to harvest the available U.S. bluefin quota without exceeding it, while preserving the opportunity for General category fishermen to participate in the winter mid-Atlantic bluefin fishery that typically begins in December. In addition, several Atlantic tuna dealers are currently providing biological samples from BFT caught by General category vessels to support ongoing NMFS-approved research regarding reproduction status and feeding habits. Continued BFT landings would support the collection of a broad range of data for these studies and for stock monitoring purposes.

Based on the considerations above, as well as the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, NMFS has determined that a quota transfer is warranted and transfers 40 mt from the Reserve category to the General category. Thus, the General category quota is adjusted to 475.1 mt for the 2012 fishing year. Once the adjusted General category quota has been reached, or on December 31, 2012 (whichever comes first), the 2012 General category fishery will be closed. The 2013 General category fishery begins January 1, 2013.

Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), and listed above.

For the 2012 fishing year to date, NMFS has adjusted the General category limit from the default level of one large medium or giant BFT as follows: two large medium or giant BFT for January (76 FR 76900, December 9, 2011), and three large medium or giant BFT for June through August (77 FR 28496, May 15, 2012), and three large medium or giant BFT for September through December (77 FR 53150, August 31, 2012). Unless changed, the General category daily retention limit starting on January 1 would be the default retention limit of one large medium or giant BFT per vessel per day/trip (§ 635.23(a)(2)). This default retention limit applies to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT.

NMFS has considered the set of criteria cited above and their applicability to the General category BFT retention limit for the January 2013 General category fishery. These considerations include, but are not limited to, the following: Biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. As this action would be taken consistent with the quotas previously established and analyzed in the 2011 BFT quotas final rule (76 FR 39019, July 5, 2011), and consistent with objectives of the Consolidated HMS FMP, it is not expected to negatively impact stock health.

A principal consideration is the objective of providing opportunities to harvest the full General category quota without exceeding it based upon the Consolidated HMS FMP goal: “Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.” Under the two-fish limit that applied in January 2012, the available subquota was reached on January 22. However, in other recent years, there has been an underharvest of the January subquota. Under the two-fish limit that applied during January 2011 and January 2010 (when fishing on the January subquota was authorized for January 1 through 31), January landings were 34 percent of the baseline subquota (7.9 mt out of 23.1 mt) and 11 percent (2.7 mt out of 23.8 mt), respectively. Thus, the default one-fish limit likely would be overly restrictive and would not support the objective of providing opportunities to harvest the full January subquota, without exceeding it. Based upon the ICCAT recommended quota, the baseline 2013 General category January subquota is 23.1 mt. Although NMFS has the authority to set the daily retention limit higher than two BFT, under a higher limit (and fish availability), the rate of harvest of the January subquota could be accelerated and result in a relatively short fishing season. A short fishing season may preclude or reduce fishing opportunities for some individuals or geographic areas. Therefore, in order to maintain an equitable distribution of fishing opportunities, a retention limit closer to the low end of the allowable range of retention limits (i.e., two fish) is warranted. A potential ancillary benefit from a subquota period that is open for an extended duration is that any scientific information (including biological samples) collected from BFT may be from fish collected over a broader

temporal and geographic range than currently sampled. Lastly, fishery participants have supported this retention limit in prior seasons.

Therefore, based on these considerations, NMFS has decided that a two-fish General category retention limit is warranted for the January subquota. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, help achieve optimum yield in the General category BFT fishery, allow collection of a broad range of data for stock monitoring purposes, and be consistent with the objectives of the Consolidated HMS FMP. Therefore, NMFS increases the General category retention limit from the default limit (one) to two large medium or giant BFT per vessel per day/trip, effective January 1, 2013, through March 31, 2013, or until the 23.1- mt January subquota is harvested, whichever comes first.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of two fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments or closure are necessary to ensure available quota is

not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the Federal Register. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9260, or access <http://hmspermits.noaa.gov>, for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer for the remainder of 2012 is impracticable as it would preclude NMFS from acting promptly to allow continued harvest of BFT that are available on the fishing grounds via a quota transfer from the Reserve category to the General category. Affording prior notice and opportunity for public comment to adjust the retention limit for the portion of the General category season that begins January 1, 2013, is impracticable as NMFS needs to wait until it has necessary data and information about the fishery before it can select the appropriate retention limit for a time period prescribed by regulation. By the time NMFS has the needed data, implementing the retention limit following a public comment period would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria. Analysis of available data shows

that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective January 1, 2013, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to provide fishing opportunities for fishermen who have access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and 635.27(a)(7), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 et seq. and 1801 et seq.

Dated: December 11, 2012

Emily H. Menashes,
Deputy Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 2012-30322 Filed 12/12/2012 at 4:15 pm; Publication Date: 12/17/2012]